

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.**

FILED BY CLERK

AUG -6 2009

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

| | | |
|-----------------------|---|----------------------------|
| THE STATE OF ARIZONA, |) | |
| |) | |
| Respondent, |) | 2 CA-CR 2009-0124-PR |
| |) | DEPARTMENT A |
| v. |) | |
| |) | <u>MEMORANDUM DECISION</u> |
| |) | Not for Publication |
| GRANVILLE JACKSON, |) | Rule 111, Rules of |
| |) | the Supreme Court |
| Petitioner. |) | |
| |) | |

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20062717

Honorable Gus Aragón, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Law Offices of Stephanie K. Bond, P.C.
By Stephanie Bond

Tucson
Attorneys for Petitioner

H O W A R D, Chief Judge.

¶1 Following a jury trial, petitioner Granville Jackson was convicted of aggravated driving under the influence of an intoxicant while his license was suspended and sentenced

to 4.5 years' imprisonment. This court affirmed his conviction and sentence on appeal. *See State v. Jackson*, No. 2 CA-CR 2007-0158 (memorandum decision filed Aug. 12, 2008). Jackson filed a petition for post-conviction relief that the trial court dismissed. He challenges that decision in this petition for review.

¶2 As he did below, Jackson contends a significant change in the law applicable to his case “would probably overturn his conviction.” Specifically, he contends the trial court erroneously instructed the jury on the meaning of the term “actual physical control” contained in A.R.S. § 28-1381. He bases his contention, however, entirely on *State v. Zaragoza*, 220 Ariz. 24, 202 P.3d 489 (App. 2008), which has since been vacated by our supreme court. *State v. Zaragoza*, ___ Ariz. ___, 209 P.3d 629 (2009). In *Zaragoza*, this court had reversed the defendant's conviction based on a jury instruction that contained language identical to that used in this case. *Id.* ¶¶ 3, 5. Our supreme court, however, found the instruction had accurately stated the law, although it recommended a different instruction to be used prospectively, and it affirmed *Zaragoza's* conviction. *Id.* ¶¶ 18, 21-22. Because the supreme court's decision supports the trial court's denial of post-conviction relief in this case, we grant Jackson's petition for review, but we deny relief.

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

PHILIP G. ESPINOSA, Presiding Judge

JOHN PELANDER, Judge